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EXAMINER

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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte ALFRED PREUKSCHAT and JURGEN ADAMEK

Appeal 2009-002767
Application 10/008,895
Technology Center 3600

Decided: August 11, 2009

Before LINDA E. HORNER, STEFAN STAICOVICI, and
KEN B. BARRETT, *Administrative Patent Judges*.

STAICOVICI, *Administrative Patent Judge*.

DECISION ON APPEAL

STATEMENT OF THE CASE

Alfred Preukschat et al. (Appellants) appeal under 35 U.S.C. § 134 from the Examiner's decision rejecting claims 1, 6, 10, and 11. Claims 4, 5, 7, and 8 have been withdrawn and claims 2, 3, and 9 have been canceled. We have jurisdiction over this appeal under 35 U.S.C. § 6 (2002).

THE INVENTION

The Appellants' invention is drawn toward a regulated dashpot with shock absorption controls that can shift continuously between the hard and soft phases. Specification 1, ll. 2-3 and 17-18.

Claim 1 is representative of the claimed invention and reads as follows:

1. A regulated dashpot with shock-absorption force controls, for motor vehicles, comprising:
 - at least one flow-regulating system including at least one shock-absorption component for a compression phase and for a decompression phase;
 - at least one valve assembly with electrically variable flow resistance regulated by a regulating valve;
 - at least one fixed bypass valve with a non-varying constricted flow cross-section hydraulically and directly paralleling the flow-regulating system, whereby said fixed bypass valve has a constant opened flow-through cross-section hydraulically in parallel with said regulating valve;
 - said at least one flow regulating system for the compression phase and said at least one flow regulating system for the decompression phase being in the form of said regulating valve with variable flow constriction, said flow resistance being continuous for providing continuous damping between soft and hard damping, said bypass valve preventing pressure pulses in damping fluid when said regulating valve transfer rapidly from open to close positions corresponding to upward wheel shocks and sudden wheel accelerations, so that sudden jolts are prevented when shifting between soft and hard damping for comfort in riding in said vehicles,

said fixed bypass valve being integratable into said flow-regulating system and having minimal passage for hydraulic fluid and preventing the dashpot from being entirely blocked when said regulating valve is closed,

said flow-regulating system for the compression and decompression phases forming main flow channels through said shock-absorption component, said valve assembly with electrically variable flow resistance forming a main valve assembly for said shock-absorption component, said fixed bypass valve having a constant non-adjustable flow cross-section.

THE REJECTIONS

The Examiner relies upon the following as evidence of unpatentability:

Preukschat	US 4,986,393	Jan. 22, 1991
Seufert	US 5,372,378	Dec. 13, 1994

The following rejections are before us for review:

The Examiner rejected claims 1 and 10 under 35 U.S.C. § 102(b) as anticipated by Seufert.

The Examiner rejected claims 6 and 11 under 35 U.S.C. § 103(a) as unpatentable over Seufert.

The Examiner rejected claims 1, 6, 10, and 11 under 35 U.S.C. § 103(a) as unpatentable over Preukschat and Seufert.

THE ISSUE

Have the Appellants demonstrated that the Examiner erred in determining that each of Seufert and Preukschat teaches a regulated dashpot that provides “continuous damping between soft and hard damping,” as required by independent claims 1 and 11?

SUMMARY OF DECISION

We REVERSE.

PRINCIPLES OF LAW

Claim Construction

When construing claim terminology in the United States Patent and Trademark Office, claims are to be given their broadest reasonable interpretation consistent with the specification, reading claim language in light of the specification as it would be interpreted by one of ordinary skill in the art. *In re Am. Acad. of Sci. Tech. Ctr.*, 367 F.3d 1359, 1364 (Fed. Cir. 2004).

Anticipation

"A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference." *Verdegaal Bros, Inc. v. Union Oil Co. of Cal.*, 814 F.2d 628, 631 (Fed. Cir. 1987).

Obviousness

It is elementary that to support an obviousness rejection all words in a claim must be considered in judging the patentability of that claim against the prior art. *In re Wilson*, 424 F.2d 1382, 1385 (CCPA 1970).

OPINION

The Seufert reference

Independent claims 1 and 11 require a regulated dashpot that provides "continuous damping between soft and hard damping." With respect to the teachings of Seufert, the Appellants argue that,

Seufert provides only discreet damping (not continuous) between three discrete stages, "soft, medium, and hard." There is no continuous damping within each stage or between the stages.

Br. 4.

In response, the Examiner takes the position that,

Seufert's system provides damping between soft, medium and hard. It is believed that *medium is a continuation between soft and hard*, Hence, it is determined that Seufert's system, as stated in the rejections, meets the claimed limitation "continuous damping between soft and hard damping".

Ans. 8. Emphasis added.

It is our finding that Seufert teaches a damping system including oscillation dampers 12 that can switch between a soft, a medium, and a hard damping characteristic. Seufert, col. 3, ll. 58-64 and fig. 1. Although we agree with the Examiner that a medium damping characteristic is in-between a soft and a hard damping characteristic, we disagree that a "medium is a continuation between soft and hard." As noted above, claims are to be given their broadest reasonable interpretation consistent with the Specification. In this case, the Specification describes a damping system that

...allows the shock-absorption performance curves to be established *anywhere* between hard and soft independently of each other as desired...

Specification 6, ll. 3-5. Emphasis added.

In other words, we find that the Specification defines a “continuous damping” system as a system that has a damping characteristic (shock-absorption curve) located *anywhere* between a hard and a soft damping characteristic and not merely a single in-between position, namely medium, as the Examiner suggests.

As such, Seufert does not teach a regulated dashpot that provides “continuous damping between soft and hard damping,” as required by independent claims 1 and 11. Accordingly, the rejection of claims 1 and 10 under 35 U.S.C. § 102(b) as anticipated by Seufert and of claims 6 and 11 under 35 U.S.C. § 103(a) as unpatentable over Seufert cannot be sustained.

The Preukschat reference

With respect to the disclosure of Preukschat, the Appellants argue that, “Preukschat also does not disclose continuous damping.” Br. 5. In response, pointing to col. 2, ll. 20-26 of Preukschat, the Examiner takes the position that because the system of Preukschat includes at least two damping elements, each damping element including a valve assembly for compression damping and a valve assembly for decompression damping having different levels of damping,

[i]t is believed that switching the valves to provide different levels of damping characteristics would encompass from soft to hard damping.

Final Rejection 9 (mailed on Nov. 2, 2005).

It is our finding that Preukschat discloses a damping system including a piston rod 1, a cylinder 2, a piston 9, and damping elements 7.1 and 7.2 positioned in parallel to each other, and related switching valves 8.1 and 8.2.

Preukschat, col. 5, ll. 20-23 and col. 6, ll. 53-59 and fig. 1c. Further, Preukschat discloses that by opening and closing the switching valves 8.1 and 8.2 independently of each other different damping characteristics can be obtained. Specifically, Preukschat discloses a high decompression stage force and a low compression stage force (switch 8.1 is open and 8.2 is closed), a low decompression stage force and a high compression stage force (switch 8.1 is closed and 8.2 is open); a high decompression stage force and a high compression stage force (switches 8.1 and 8.2 are closed); and finally, a low decompression stage force and a low compression stage force (switches 8.1 and 8.2 are open). Preukschat, col. 8, ll. 1-20 and fig. 2a. As such, in contrast to the Examiner's position, the damping system of Preukschat merely provides four distinct damping characteristics. Therefore, in view of the Specification, which as shown above describes a "continuous damping" system as a system that has damping characteristic located *anywhere* between a hard and a soft damping, we find that the damping system of Preukschat does not provide "continuous damping," as required by independent claims 1 and 11. Furthermore, the application of Seufert does not make up for the deficiency in the disclosure of Preukschat as discussed above. Hence, the rejection under 35 U.S.C. § 103(a) of claims 1, 6, 10, and 11 as unpatentable over Preukschat and Seufert is also reversed.

CONCLUSION

The Appellants have demonstrated that the Examiner erred in determining that each of Seufert and Preukschat teaches a regulated dashpot that provides "continuous damping between soft and hard damping," as required by independent claims 1 and 11.

Appeal 2009-002767
Application 10/008,895

DECISION

The Examiner's rejection of claims 1, 6, 10, and 11 is reversed.

REVERSED

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